

Applicant: Y. Ikeda, et al.
U.S.S.N.: 09/322,108
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REMARKS

Claims 3, 4, 7, 9-16 and 22-32 are pending in the subject application.

Claims 1-2, 5-6, 8, 17-19 and 21 were previously canceled.

Although not indicated in the above-referenced Office Action, claim 13 had been previously acknowledged as being allowable.

Claims 3, 4, 7, 9-16 and 22-32 are subject to a restriction requirement and/ or an election of species requirement.

In addition to responding to the restriction or election of species requirement, Applicants are providing an updated claim listing herewith. The updated claim listing reflects the incorporation of the amendments to the claims in the Response dated September 13, 2004 and also includes a new descriptive legend for those claims that would be withdrawn if the election requirement were not withdrawn. There are no other changes or amendments to the claims provided in the within Response.

ELECTION REQUIREMENT

In the above referenced Office Action, the Examiner provided that the pending claims are directed to more than one patentably distinct species. Specifically, the claims are directed to the following species: Species 1, shown in Figure 7; Species 2 shown in Figure 16; Species 3 shown in Figure 21 and Species 4 shown in Figure 26. The Examiner further provided that there is no generic claim(s).

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In accordance with the above described election requirement, Applicants were requested under 35 U.S.C. §121 to elect a single disclosed species to which prosecution on the merits will be restricted to if no generic claim is finally held allowable. In this regard, Applicants elect, with traverse, Species 3, which includes claims drawn to the embodiments shown in Figure 21, presently embodied in claims 11-14, 20 and 30-32.

Applicants first traverse the election requirement on the basis that while the claims of the identified species are arguably drawn to four distinct species, a search for any of the identified species would involve considering the same prior art (*i.e.*, same classes/subclasses would have to be considered). As such, Applicants respectfully submit that, because a comprehensive search for any one species would involve consideration of the subject matter of all four species, there would be no undue burden on the Patent Office to consider or examine the claims to all four species at the same time.

Furthermore, Applicants traverse on the grounds that imposing an election requirement at this stage of prosecution would appear to be barred or otherwise not be proper in the circumstances. MPEP-811 provides that there must be a serious burden for imposing a restriction requirement after the first action on the merits and also that such action is not proper after final. In the case of the present invention, the claims in the present application were examined and finally rejected in the parent application, thus the claims have been finally rejected albeit that the finality was subsequently withdrawn with the filing of the CPA. Also, the claims in the CPA have received two actions on the merits. In the present circumstances, Applicants respectfully submit that the prosecution of the claims has progressed far beyond the point where

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one would reasonably it necessary to impose a restriction/election of species requirement on the grounds that it would otherwise impose a serious burden on the Office to continue prosecution of the claims, that's assuming of course that the prior final office action does not present a bar to the imposition of the election requirement.

Accordingly, Applicants respectfully submit that the election of species requirement should be withdrawn and all of the pending claims be prosecuted at the same.

It is respectfully submitted that the subject application is in a condition for allowance.

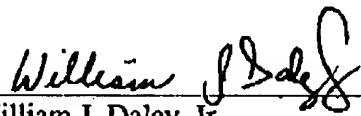
Early and favorable action is requested.

Applicants believe that additional fees are not required for consideration of the within Response. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, the Commissioner is hereby authorized and requested to charge Deposit Account No. 04-1105.

Respectfully submitted,
Edwards & Angell, LLP

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By:


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